IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.974 OF 2005

Sanjay Shivajirao Bhosale)..Petitioner

Versus

Kolhapur Municipal Transport & others)..Respondents

Mr.Nitin V.Pradhan with Ms.S.D.Khot for the Petitioner.

Mr.D.S.Sawant for Respondent Nos.1 and 2.

Mr.M.S.Topkar for Respondent No.3.

Mr.P.P.Chavan with Mr.Bhate for Respondent No.4.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 21ST JULY 2005

P.C.:

. This Petition is directed against the order dated 3rd December 2004 passed below Exhibit U-2 in Complaint (ULP) No.238 of 2003 by the Industrial Court, Kolhapur, which is an interim order. By this order, the Industrial Court has stayed the selection list dated 6th July 2002 by confirming the ad-interim order passed on 5th September 2003. The Petitioner is an intervenor in the Complaint which was originally filed by the non-recognised Union. The recognised Unions have been added as Respondents in the Complaint.

2. The submissions advanced on behalf of the Petitioner are : (i) that the Industrial Court had no jurisdiction to entertain the Complaint since the selection was to the post of Superintendent and Superintendents are not "workman" as defined in Section 2(s) of the Industrial Disputes Act, 1947 read with Section 3(5) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, and (ii) that the Petitioner had been validly selected after successfully appearing for the requisite examination and, therefore, his selection cannot be stayed.

3. The Industrial Court on consideration of the Written Statement filed by the first Respondent, has held, prima facie, that Respondent No.1 had violated the recruitment Rules by not advertising the post of Superintendent. The nominations from the Employment Exchange were also not sought for as required under the Rules. Instead, as stated in the Written Statement, the first Respondent due to paucity of funds has only permitted their employees to appear for the examination and thereafter the Selection Committee selected the candidates. The Industrial Court has rightly found, prima facie, that the selection Rules are violated by not advertising for the post and by not calling for

recommendations or nominations from the Employment Exchange. The submission of the learned Advocate for the Petitioner that the Industrial Court has no jurisdiction has also been considered and, in my view, the Industrial Court has rightly decided that it has jurisdiction. There is no dispute that the Complainants who are Assistant Superintendents are entitled to appear for the examination for recruitment to the post of Superintendent. Therefore, although the post of Superintendent may be a post which may not be covered by the definition of "workman", there is no dispute that Assistant Superintendents are workman and are members of Respondent Nos.2 and 3 herein.

4. In my view, there is no need to interfere with the interim order of the Industrial Court. Writ Petition rejected.